

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Edward Bryan, #235730,)	Civil Action No.: 3:12-1874-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
SCDC,)	
)	
Defendant.)	
)	

Plaintiff Edward Bryan, a state prisoner proceeding *pro se*, filed this action, alleging violations of his rights under the Eighth Amendment. This matter is before the Court after the issuance of the Report and Recommendation (“R&R”) of United States Magistrate Judge Joseph R. McCrorey.¹ In the R&R, the Magistrate Judge recommends that the Court summarily dismiss Plaintiff’s action against Defendant *without prejudice* and without service of process.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff, who is incarcerated at Ridgeland Correctional Institution, filed this 42 U.S.C. § 1983² action in June 2012 against Defendant SCDC. He asserts that his Eighth Amendment rights were violated when he was required to stay outside on a recreation field for several hours in fifty-degree temperatures on December 6, 2010, while waiting to be called for a disciplinary violation hearing. He seeks damages “in the amount of \$200,000.00,” as well as “injunctive relief for this

¹ In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 (D.S.C.), this matter was referred to the Magistrate Judge for pretrial handling. The Magistrate Judge’s review of Plaintiff’s complaint was conducted pursuant to the screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A. The Court is mindful of its duty to liberally construe the pleadings of *pro se* litigants. See *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978); *but see Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

² Because Plaintiff proceeds *pro se*, the Court liberally construes his Eighth Amendment claim as raised pursuant to 42 U.S.C. § 1983. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Honorable Court to determine appropriate/inappropriate to use the” recreational fields “for said purposes.” Compl., ECF No. 1. The Magistrate Judge issued his R&R on August 1, 2012, R&R, ECF No. 8, and Plaintiff filed timely objections to the R&R on August 13, 2012, Pl.’s Objs., ECF No. 10.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the R&R to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

The right to *de novo* review may be waived by the failure to file timely objections. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate’s proposed findings and recommendations.” *Id.* Moreover, in the absence of objections to the R&R, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). However, in the absence of objections, the Court must “ ‘satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

DISCUSSION

The Magistrate Judge recommends summarily dismissing Plaintiff’s complaint on the basis that Defendant, a state agency, is immune under the Eleventh Amendment in suits for damages. In

his objections, Plaintiff argues that the Eleventh Amendment “isn’t a complete bar” because of “the admitted practices of the Defendant is compelling evidence to ‘overturn’ the constitutionally guarante[e]d immunity expressed” by the Magistrate Judge. Despite Plaintiff’s objections, however, the Court finds no error in the Magistrate Judge’s recommendation. *See Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (“There can be no doubt, however, that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless Alabama has consented to the filing of such a suit.”); *Quern v. Jordan*, 440 U.S. 332, 345 (1979) (“[Section] 1983 does not explicitly and by clear language indicate on its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States.”).

CONCLUSION

The Court has thoroughly analyzed the entire record, including the complaint, the Magistrate Judge’s R&R, objections to the R&R, and the applicable law. For the reasons stated above and by the Magistrate Judge, the Court hereby overrules Plaintiff’s objections and adopts the Magistrate Judge’s R&R.

IT IS THEREFORE ORDERED that Plaintiff’s complaint be **DISMISSED** *without prejudice* and without service of process.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

November 27, 2012
Florence, South Carolina